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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

FILE: B-198934

DATE: January 29, 1981

MATTER OF: Captain Herbert E. Tuttle, Jr., USNR (Retired)

- DIGEST:
1. Member performed active duty from June 30, 1970, to September 30, 1970, and filed ~~claim with Navy~~ for basic allowance for quarters for this period on September 14, 1979. The claim was forwarded to General Accounting Office on September 24, 1979, as a possible time barred claim. Under provisions of  31 U.S.C. 71a, as amended in 1975 member had 6 years not 10 years from date claim accrued, to file in GAO. Accordingly, claim is barred.
  2. Member whose claim arose during active duty from June 30, 1970, to September 30, 1970, filed claim with Navy on September 14, 1979. Claim was forwarded to CAO on September 24, 1979. Member contends that claim is not barred as it arose during time of war (Vietnam conflict) and under the proviso in  31 U.S.C. 71a he has 5 years after peace is established to file claim. Even under that proviso a decision of when peace is established is dependent on political acts and, for Vietnam conflict, a political act which established peace took place on January 27, 1973. Therefore, proviso would not operate to alter untimeliness of this claim.

Captain Herbert E. Tuttle, Jr., USNR (Retired) appeals the denial of his claim for basic allowance for quarters by the Claims Group of this Office. We concur with the Claims Group that Captain Tuttle's claim is barred under  31 U.S.C. 71a because it was not filed in the General Accounting Office within the time period specified in that provision.

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Captain Tuttle was on active duty from June 30, 1970, to September 30, 1970. For this period, he indicates that he received basic pay and basic allowance for subsistence. He further indicates that he received no basic allowance for quarters. It was not until September 14, 1979, that the member, who retired on April 6, 1971, forwarded his claim to the U.S. Navy Finance Center. The Finance Center forwarded the claim to our Claims Group where it was received on September 24, 1979.

The Claims Group informed Captain Tuttle that the claim was barred under the provisions of the act of October 9, 1940, c. 788 §§ 1, 2, 54 Stat. 1061, as amended by Public Law 93-604, title VIII, § 801, 88 Stat. 1965 (1975), codified at 31 U.S.C. § 71a, which requires that a claim cognizable by the General Accounting Office must be filed in that Office within 6 years after it first accrues or be forever barred.

That act provides in pertinent part as follows:

"(1) Every claim or demand \* \* \* against the United States cognizable by the General Accounting Office under sections 71 and 236 of this title shall be forever barred unless such claim, bearing the signature and address of the claimant or of an authorized agent or attorney, shall be received in said office within 6 years after the date such claim first accrued: Provided, That when a claim of any person serving in the military or naval forces of the United States accrues in time of war, or when war intervenes within five years after its accrual, such claim may be presented within five years after peace is established."

In his letter requesting reconsideration, Captain Tuttle, in effect, sets forth three bases upon which he questions whether the barring act is for application in his situation. The first basis is that the amendment of January 2, 1975, Public Law 93-604, 88 Stat 1965, which shortened the period for filing claims from 10 years to 6 years, is the date from which he had 6 years to file his claim and his filing

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with the Navy on September 14, 1979, satisfied this. Next, he questions how individuals were given notice of the amendment. Finally, he questions whether the provision in the act, which gives an individual serving in the military or naval forces whose claim accrued in time of war, 5 years after peace is established to file a claim in the General Accounting Office, is applicable to his claim. He raises this question as the Vietnam conflict was ongoing when his claim arose.

We note first that the effective date for tolling the running of the limitation period in the act is the date the claim is received in the General Accounting Office and not the date the member submits his claim to his agency. ✓B-170443, November 25, 1974. Therefore, Captain Tuttle's date of filing his claim is September 24, 1979, the date it was received in this Office. Prior to the amendment of the barring act, a claimant had 10 years from the date his claim first accrued to file it in the General Accounting Office. The amendment merely shortened the period to file from 10 years to 6 years after the claim accrued. Thus, the accrual date of Captain Tuttle's claim was not changed but rather the period in which he had to file his claim was changed. His claim accrued on September 30, 1970, so he originally had until September 29, 1980, to file his claim. However, the amendment shortened this time for him to file to September 29, 1976. See ✓58 Comp. Gen. 738 (1979); and ✓B-185748, July 12, 1976.

As to Captain Tuttle's question regarding how individuals were given notice of the amendment, we point out that the act is part of the laws of the United States and it is presumed in law that each individual who might be affected by such a statute has knowledge of its provisions. The fact that one may not be aware of a law or an amendment does not defeat its effect. See: ✓B-165383, November 29, 1968, and October 25, 1968.

Mr. Tuttle's final basis for reconsideration relies on the proviso to the barring act which extends the period for filing a claim for an individual serving in

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the military or naval forces in time of war to 5 years after peace is established.

While we have not previously considered whether the Vietnam conflict was a war for purposes of the proviso, we did consider the proviso to be operative for claims arising during the Korean conflict. ✓ See B-173514, August 9, 1971. Also, several Federal courts have held that the Vietnam conflict was a war for purposes of applying the wartime provisions of certain Federal statutes to military members. ✓ See Broussard v. Patton, 466 F.2d 816 (9th Cir. 1972); and ✓ Rotko v. Abrams, 338 F. Supp. 46 (D. Conn. 1971).

Assuming, then, that the proviso is for application here, the relevant question becomes when was peace established. To determine this, we must look to a political act of the Congress or the President which may be, among other things, a ✓ treaty, legislation, or presidential proclamation. ✓ Ludecke v. Watkins, 335 U.S. 160 (1948); Cf. ✓ Lee v. Madigan, 358 U.S. 228 (1959).

For the Vietnam conflict, the political act which ended the conflict was the signing of the cease fire agreements and implementing protocols on January 27, 1973, in Paris, France. This ended the United States active participation in the conflict and by April 1, 1973, all American combat troops were withdrawn from South Vietnam and all American prisoners of war were released. See ✓ Drinan v. Nixon, 364 F. Supp. 854, "Appendix" at 866 (D. Mass. 1973); and Proclamation No. 4373, ✓ 40 F.R. 20257 (May 7, 1975).

Thus even under the proviso Mr. Tuttle's claim was to be filed within 5 years from January 27, 1973. Since he did not file his claim until September 24, 1979, the proviso would not operate to alter the untimeliness of his filing and his claim is barred.

*Milton J. Fowler*

For the Comptroller General  
of the United States